UNITED
NATIONS

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Security Council

Distr.
GENERAL

S/22885
2 August 1991
ENGLISH
ORIGINAL: SPANISH

LETTER DATED 2 AUGUST 1991 FROM THE PRESIDENT OF THE GOVERNING COUNCIL OF THE UNITED NATIONS COMPENSATION COMMISSION TO THE PRESIDENT OF THE SECURITY COUNCIL

In accordance with a decision taken by the Governing Council of the United Nations Compensation Commission, at its tenth meeting, held on 2 August 1991, I have the honour to transmit the following for the information of the members of the Security Council.

The Governing Council of the United Nations Compensation Commission established by Security Council resolution 692 (1991), of 20 May 1991, held its first session at Geneva from 23 July to 2 August 1991.

At its fourth meeting, held on 25 July 1991, the Governing Council approved Guidelines for the conduct of its work (see annex I), a copy of which is attached. In accordance with paragraph 5 of its Guidelines, the Governing Council invited the representatives of Bangladesh, Iraq, Kuwait, Pakistan, the Philippines and Sri Lanka to address the Council and reply to questions put to them by the members.

At its ninth meeting, held on 1 August 1991, the Governing Council decided to hold informal consultations the week beginning 16 September 1991 and to convene its second session the week beginning 14 October 1991.

At its tenth meeting, held today, 2 August 1991, the Governing Council adopted the attached criteria for expedited processing of urgent claims, a copy of which is attached (see annex II). The criteria will be issued as a document of the Governing Council for general distribution (S/AC.26/1991/1).

At the same meeting, the Governing Council approved the proposals contained in a working paper submitted by the United States of America on arrangements for ensuring payments to the Compensation Fund

(S/AC.26/1991/WP.4/Rev.1), as orally revised. The text of that decision is contained in document S/AC.26/1991/2 of the Governing Council, which is being given general distribution (see annex III).

(Signed) Philippe J. BERG
President of the Governing Council
of the United Nations Compensation
Commission

Annex I

Guidelines for the conduct of the work of the Governing Council of the United Nations Compensation Commission

(Approved at the 4th meeting, held on 25 July 1991)

1. The mandate of the Governing Council is defined in the report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 687 (1991) (S/22559). By paragraphs 3 and 5 of its resolution 692 (1991) the Security Council decided to establish the Fund and the Commission referred to in paragraph 18 of resolution 687 (1991) in accordance with section I of the Secretary-General's report, and directed the Governing Council to implement the provisions of section E of resolution 687 (1991), taking into account the recommendations in section II of the Secretary-General's report.

2. The Governing Council will hold its meetings in private but will open them to the public as and when it deems it necessary for the enhancement of the effectiveness of the Governing Council.

3. As provided for in paragraph 10 of the Secretary-General's report, decisions of the Governing Council on the method of ensuring that payments are made to the Fund should be taken by consensus. Other decisions will be taken by a majority of at least nine of its members. No veto will apply in the Governing Council.

4. As provided for in paragraph 10 of the Secretary-General's report, if consensus is not achieved on any matter for which it is required, the question will be referred to the Security Council on the request of any member of the Governing Council.

5. The Governing Council may invite States that it considers to have particular interest in its work to participate without a vote in its discussions. It may also invite members of the United Nations Secretariat or other persons to supply it with information or to give other assistance in examining matters within its competence.

6. Information on the work of the Governing Council will be made publicly available by the President when so decided in consultation with the members of the Governing Council.

7. The Governing Council will be provided with summary records of all its meetings in all official languages.

8. The success of the work of the Governing Council depends upon the cooperation of all States.

9. Prior to the close of each session, the Governing Council will decide on the dates and duration of its next session. In between sessions, if any member of the Governing Council or the Executive Secretary raises a matter

that requires prompt consideration by the Governing Council, the President will hold consultations with the members of the Governing Council and could decide to convene it. Members will be informed of the opening date of the session as well as the provisional agenda at least five days in advance.

10. The Governing Council will, on behalf of the Commission, report periodically to the Security Council.

Annex II

Criteria for expedited processing of urgent claims

1. The following criteria will govern the submission of the most urgent claims pursuant to resolution 687 (1991) for the first categories to be considered by the Commission. It provides for simple and expedited procedures by which Governments may submit consolidated claims and receive payments on behalf of the many individuals who suffered personal losses as a result of the invasion and occupation of Kuwait. For a great many persons these procedures would provide prompt compensation in full; for others they will provide substantial interim relief while their larger or more complex claims are being processed, including those suffering business losses.

2. These criteria are without prejudice to future Council decisions with respect to criteria for other categories of claims, which will be approved separately as promptly as possible, with expert advice from Commissioners as may be required.

3. The following criteria are not intended to resolve every issue that may arise with respect to these claims. Rather, they are intended to provide sufficient guidance to enable Governments to prepare consolidated claims submissions. It will probably be necessary for the Council to make further decisions on the processing of claims after receiving expert advice where needed.

4. Each Government may submit one or more consolidated claims for each category established by the Council. Thus, each Government may make separate consolidated submissions covering claims in each of the categories set forth below; and it may later submit separate consolidated claims for each additional category to be established by the Council.

5. The Council will promptly establish criteria for additional categories of claims, to permit consolidated submissions by Governments for all losses covered by paragraph 16 of resolution 687 (1991). Business losses of individuals may be part of consolidated claims under the expedited procedures set forth below. The Council will provide further advice on an urgent basis as to the types of business losses eligible for consideration under the expedited procedures. Business losses of corporations and other legal entities will be covered in other criteria to be established. The Council will also consider separately claims on behalf of third parties, such as Governments, insurance companies, relief agencies and employers, which have made payments or provided relief to persons suffering compensable losses.

6. The Council will consider promptly, after receiving expert advice, the circumstances in which claims for mental pain and anguish may be admitted, the amounts to be awarded, and the limits to be imposed thereon.

7. The Council will separately examine the question of the eligibility or otherwise of claims by or in respect of members of the allied coalition armed

forces of the Member States that cooperated with the Government of Kuwait; the Executive Secretary will have available, inter alia, the provisions of the relevant national legislation of the Governments concerned.

8. The Commission will process the claims in the initial categories in paragraphs 10 to 16 on an expedited basis. While decisions on the precise method of processing these claims will be made at a later stage, the following steps are contemplated. As the claims are received they would be submitted to a panel of Commissioners for review within a set time-limit. If, as expected, the volume of claims in these categories is large, the Commissioners would be instructed to adopt expedited procedures to process them, such as checking individual claims on a sample basis, with further verification only if circumstances warranted. The Commissioners would be asked to report to the Council on the claims received and the amount recommended for the claims submitted by each Government. The Council would then decide on the total amount to be allocated to each Government. To the extent necessary, the Council would seek expert advice (for example, on what constitutes serious personal injury) at any stage of the process.

9. As contributions are made to the Fund, the Council will allocate those funds among the various categories of claims. If resources of the Fund are insufficient with respect to all claims processed to date, pro rata payments would be made to Governments periodically as funds become available. The Council will decide on the priority for payment of various categories of claims.

PAYMENT OF FIXED AMOUNTS

10. These payments are available with respect to any person who, as a result of Iraq's unlawful invasion and occupation of Kuwait: (a) departed from Iraq or Kuwait during the period of 2 August 1990 to 2 March 1991; (b) suffered serious personal injury; or (c) whose spouse, child or parent died.

11. In the case of departures, $2,500 will be provided where there is simple documentation of the fact and date of departure from Iraq or Kuwait. Documentation of the actual amount of loss will not be required. Claims submitted under this procedure for departure from Iraq or Kuwait cannot be resubmitted for a greater amount in any other category. If the loss in question was greater than $2,500 and can be documented, it may instead be submitted under paragraph 14 and in other appropriate categories.

12. In addition, in the case of serious personal injury not resulting in death, $2,500 will be provided where there is simple documentation of the fact and date of the injury; and in the case of death, $2,500 will be provided where there is simple documentation of the death and family relationship. Documentation of the actual amount of loss resulting from the death or injury will not be required. If the actual loss in question was greater than $2,500, these payments will be treated as interim relief, and claims for additional amounts may also be submitted under paragraph 14 and in other appropriate categories.

13. These amounts are payable cumulatively where more than one situation applies with respect to a particular person. However, no more than $10,000 will be paid for death, and no more than $5,000 for departure, with respect to any one family (consisting of any person and his or her spouse, children and parents).

CONSIDERATION OF CLAIMS FOR UP TO $100,000 OF ACTUAL LOSSES PER PERSON

14. These payments are available with respect to death or personal injury, or losses of income, support, housing or personal property, or medical expenses or costs of departure, as a result of Iraq's unlawful invasion and occupation of Kuwait. The Commission will give expedited priority consideration to claims for such losses up to $100,000 per person.

15. (a) Such claims must be documented by appropriate evidence of the circumstances and the amount of the claimed loss. The evidence required will be the reasonable minimum that is appropriate under the circumstances involved, and a lesser degree of documentary evidence would ordinarily be required for smaller claims, such as those below $20,000.

(b) If the loss in question was greater than $100,000, claims for additional amounts may also be submitted in other appropriate categories. Criteria for the submission of claims in excess of $100,000 will be approved separately. Claims larger than $100,000 may be submitted in their entirety at a later date under those separate procedures, or the first $100,000 may be submitted at this time and the remainder separately.

16. Compensation will not be provided for losses suffered as a result of the trade embargo and related measures, nor will costs of attorneys' fees or other expenses for claims preparation be compensated under this category. Any compensation, whether in funds or in kind, already received from any source will be deducted from the total amount of losses suffered.

REQUIREMENTS APPLICABLE UNDER BOTH CATEGORIES

17. Claims will not be considered on behalf of Iraqi nationals who do not have bona fide nationality of any other State.

18. Claims must be for death, personal injury or other direct loss to individuals as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:

(a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;

(b) Departure from or inability to leave Iraq or Kuwait (or a decision not to return) during that period;

(c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;

(d) The breakdown of civil order in Kuwait or Iraq during that period; or

(e) Hostage-taking or other illegal detention.

19. Claims will be submitted by Governments. Each Government will normally submit claims on behalf of its nationals; each Government may, in its discretion, also submit the claims of other persons resident in its territory. In addition, the Council may request an appropriate person, authority or body to submit claims on behalf of persons who are not in a position to have their claims submitted by a Government. Each Government shall make one or more consolidated submissions of all such claims for each category. The Council encourages the submission of such claims within six months from the date on which the Executive Secretary circulates to Governments the claims forms described below; and the Commission will thereupon give consideration to such claims as provided herein. The Council will consider at a later time the period within which all such claims must be submitted.

20. Each consolidated claim must include:

(a) A signed statement by each individual covered containing:

(i) His or her name and address, and any passport number or other identifying national number;

(ii) For claims under paragraph 14, the amount, type, and reason for each element of the loss, and any compensation, whether in funds or in kind already received from any source for the claim asserted;

(iii) Any documents evidencing the matters set forth in the definition of each category, as well as the items set forth in the preceding subparagraph; and

(iv) His or her affirmation that the foregoing information is correct, and that no other claim for the same loss has been submitted to the Commission;

(b) The affirmation of the Government submitting the claim that, to the best of the information available to it, the individuals in question are its nationals or residents, and the affirmation of the Government or of the person, authority or body as referred to in paragraph 19 that it has no reason to believe that the information stated is incorrect.

21. The Executive Secretary (or a Commissioner) will prepare and the Executive Secretary will distribute a standard form for submission of claims within each category, incorporating the above elements in a clear and concise

manner. Except as may otherwise be agreed between the Executive Secretary and the Government in question, claims will be submitted to the Executive Secretary by Governments or by persons, authorities or bodies as referred to in paragraph 19 on the standard form and must include the information in an official language of the United Nations. Each Government may adopt such procedures as it finds appropriate in preparing its consolidated claim. The Executive Secretary (or a Commissioner) will be available to answer questions or provide assistance to any Governments which may request it.

Annex III

Decision taken by the Governing Council of the United Nations Compensation Commission, at its 10th meeting, held on 2 August 1991

Arrangements for ensuring payments to the Compensation Fund

The elaboration of a system for ensuring payments to the Fund with respect to future Iraqi oil exports is too complex for adoption at the first session of the Governing Council. It is clear that the Governing Council will require adequate factual information to understand the pre-invasion and current oil situation and on options for holding revenues from Iraqi exports of petroleum and petroleum products. The Governing Council taking into account the decision of the Security Council, decides:

(a) To request the Executive Secretary, with the assistance of an expert in the oil trade, to report to the Governing Council by early September on the following: the legal, financial, market and other technical aspects of Iraq's pre-invasion oil trade; the quantity, quality and value of oil subject to paragraph 6 of Security Council resolution 692 (1991); the capacity of Iraq to resume oil exports, in what quantities, quality and time-frame, and the estimated value of resumed oil exports under various possible scenarios; the technical possibilities for monitoring Iraq's oil exports, including oil pipeline flows, metering, measurements at terminals (tank and/or flange), and the resources needed to implement various options;

(b) To request the Executive Secretary, with the assistance of an expert or experts in international financial transactions, and after contacting appropriate institutions, to report to the Governing Council by early September on options for holding and managing revenues from Iraqi exports of petroleum and petroleum products;

(c) To request a Working Group of Governing Council members, after consultation with an expert or experts in the oil trade and in related financial transactions, to meet in September to develop a proposal for a mechanism for ensuring payments to the Fund for presentation to the second session of the Governing Council in October. The Working Group would take into account the reports of the Executive Secretary and the experts' advice, as well as paragraph 19 of Security Council resolution 687 (1991) and the Secretary-General's report.